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Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Establishment of a Class A)	MM Docket No. 99-292
Television Service)	RM-9260

NOTICE OF PROPOSED RULE MAKING

Adopted: September 22, 1999

Released: September 29, 1999

Comment Date: [60 days after publication in the Federal Register]

Reply Comment Date: [90 Days after publication in the Federal Register]

By the Commission: Chairman Kennard and Commissioner Tristani issuing a joint statement.

I. Introduction

1. By this *Notice* we consider additional interference protections for certain stations in the Low Power Television (LPTV) service¹, including some of the protections available to full service TV stations. At this stage, we believe it is appropriate to consider the creation of a new "Class A" LPTV service that would afford some measure of "primary" status to qualifying stations. The stability this status could provide to these stations would enhance their ability to furnish valuable service to their communities, including locally produced programming. Additionally, it could augment their capacity to obtain financing, to engage in the long-term planning necessary to support the continuation of this service, and to enter the world of digital television. A Class A service could help to preserve LPTV stations that, in some cases, are a

¹ The Low Power Television Service (Subpart G of Part 74 of the Commission's Rules) primarily consists of low power television (LPTV) stations and television translator stations. LPTV stations may retransmit the programs of full service television stations and may originate programming. A TV translator station rebroadcasts the programs and signals of a television broadcast station and may originate emergency warnings of imminent danger and, additionally, not more than thirty-seconds per hour of public service announcements and material seeking or acknowledging financial support deemed necessary to the continued operation of the station. Stations in the low power television service are authorized with "secondary" frequency use status and, as such, may not cause interference to, and must accept interference from full service television stations and other primary services. Additionally, as the name suggests, LPTV service stations have lower authorized power levels than full service stations. However, unlike full service stations, they are not restricted to operating on a channel specified in a table of allotments. Also, they are not subject to numerous rules applicable to full service stations.

community's only local television station. It could also preserve and enhance the increased broadcast ownership diversity resulting from the LPTV service, including significant opportunities for minorities, women and small businesses.

2. The *Notice* responds to a petition for rule making filed by the Community Broadcasters Association (CBA).² CBA urges the Commission to secure a permanent spectrum home for low power television (LPTV) stations that provide substantial amounts of locally produced programming to their communities, thereby avoiding disruption or even elimination of service due to the emergence of digital television (DTV) and other new primary services.³ In the DTV proceeding, we stated our intention to address CBA's petition.⁴ The *Notice* seeks comments on creation of a form of primary status for qualifying stations and on the appropriate regulatory framework for a Class A television service.

II. BACKGROUND

A. The Low Power Television Service

3. The Commission created the low power television service in 1982.⁵ In so doing, it noted that the first of its "decision criteria" had been the "public need for program diversity."⁶ The Commission concluded that the record in the proceeding evidenced "a public desire for additional television service, as well as a belief that low power stations can provide diverse programming."⁷ Further, it acknowledged the potential for these stations to provide local program service and concluded that the very nature of the service made it likely that LPTV stations would

² The petition was filed on September 30, 1997, and amended on March 18, 1998. On April 21, 1998, the Commission gave public notice of the filing of the petition and amendment (RM-9260) and sought public comment. *Public Notice* (No. 82996), "Petition for Rulemaking Filed for "Class A" TV Service" (RM-9260), April 21, 1998.

³ On February 2, 1999, legislation was introduced in the U.S. House of Representatives by Representative Norwood (R-GA), *et. al.*, the "Community Broadcasters Protection Act of 1999" (H.R. 486), proposing a primary Class A service for qualifying LPTV stations. On April 13, 1999, a hearing was held before the House Subcommittee on Telecommunications, Trade and Consumer Protection on "The Regulatory Classification of Low-Power Television Stations." On August 5, 1999, the "Community Broadcasters Protection Act of 1999" (S. 1547) was introduced in the U.S. Senate by Senator Burns (R-MT), *et. al.* The legislative proposals are similar in many respects to the CBA petition and different in others.

⁴ *Memorandum, Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 7418 (1998) at para. 125.

⁵ *Report and Order* in BC Docket No. 78-253, 51 R. R. 2d 476 (1982).

⁶ *Id.* at 484, *see also Notice of Inquiry* in BC Docket 78-253, 68 FCC 2d 1525, 1536 (1978).

⁷ 51 R. R. 2nd at 484.

have to be very "directly responsive" to the interests of local consumers.⁸ Moreover, it deduced that the relatively low construction cost and small coverage area of LPTV stations suited them to programming to smaller communities and discrete groups in larger communities.⁹

4. The Commission, however, also recognized that important spectrum utilization issues were present. Accordingly, it created LPTV as a "secondary spectrum priority" service whose members "may not cause objectionable interference to existing full service stations, and...must yield to facilities increases of existing full service stations or to new full service stations where interference occurs."¹⁰

5. Since its inception, and notwithstanding its limitations, the LPTV service has grown and is providing significant television service to diverse audiences throughout the country. Currently, there are some 2,200 licensed LPTV stations in approximately 1000 communities,¹¹ operating in all 50 states. These stations serve both rural and urban audiences. Commenters on the CBA petition point out that LPTV stations provide a valuable service. They say that, due to their very nature, LPTV stations can be fit into areas where a higher power station cannot be accommodated in the Table of Allotments.¹² In many cases, LPTV stations are the only television station in an area providing local news, weather and public affairs programming.¹³ Additionally, even in well-served markets, LPTV stations can and do provide service to the residents of discrete geographical communities within those markets.¹⁴ Similarly, they provide a wide variety of programming. Commenters say that many stations air programming, often locally produced, to residents of specific ethnic, racial and interest communities within the larger area, including airing programming in foreign languages.¹⁵ Some LPTV stations are affiliates of

⁸ *Id.* at 484-485.

⁹ *Id.* at 485.

¹⁰ *Id.* at 486; *see also id.* at n. 23. "[Because] it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service, we shall not take low power stations into account in authorizing full service stations, and we urge low power applicants to consider this fact when they select channels."

¹¹ *Public Notice*, "Broadcast Station Totals as [of] August 12, 1999."

¹² *See, e.g.*, comments of AirWaves, Inc. at 1. All references to comments and reply comments pertain to comments filed in response to *Public Notice* (No. 82996).

¹³ Comments of Free Life Ministries, Inc. at 1.

¹⁴ In its comments, D Lindsey Communications notes the its LPTV station is the only station providing local news for residents of Temecula and Murrietta, CA, both of which are within the Los Angeles DMA. Comments of D Lindsey Communications at 1. *See also* comments of Engle Broadcasting at 1-2.

¹⁵ *See, e.g.*, comments of Community Broadcasting Company of San Diego at 2; comments of Hispanic Broadcasters of AZ, Inc. at 1; Channel 19 TV Corp. at 2; comments of ZGS Broadcast Holdings, Inc. at 1, comments of National Minority T.V., Inc at 1; comments of Liberty University, Inc. at 2; comments of Debra Goodworth,

broadcast networks.

6. The LPTV service has also significantly increased the diversity of broadcast station ownership. Stations are operated by such diverse entities as community groups, schools and colleges, religious organizations, radio and TV broadcasters, and a wide variety of small businesses. The service has provided first-time ownership opportunities for minorities and women.¹⁶

7. The low power television service also includes television translator stations, which rebroadcast the programs of full service TV stations. In most respect translators are technically equivalent to LPTV stations and are licensed in the same manner. Currently, there are approximately 4,900 licensed TV translators;¹⁷ most operate in the western mountainous regions of the country. Translators serve the public by delivering free over-the-air television service, mostly to rural communities that cannot directly receive the nearest TV stations because of distance or intervening terrain obstructions. They also provide "fill-in" service to terrain-obstructed areas within a full service station's service area.

8. As we have acknowledged throughout the course of our DTV proceedings, the pursuit of other compelling public interest goals may negatively affect the service of LPTV stations in certain communities.¹⁸ Specifically, to facilitate the transition from analog to digital television, the Commission has provided a second channel for each full service television licensee in the country that will be used for digital broadcasting during the period of conversion to an all-digital broadcast service.¹⁹ At the same time, the amount of radio frequency spectrum allocated to broadcast television is being reduced.²⁰ The conversion will eventually accommodate more

Turnpike Television at 1-2.

¹⁶ *First Report and Order* in MM Docket No. 93-114, 9 FCC Rcd 2555 (1994).

¹⁷ *Public Notice*, "Broadcast Station Totals as [of] August 12, 1999."

¹⁸ TV translator stations may be affected to a lesser extent, given that most are distantly located from full service stations or are terrain-shielded from them. For instance, in the DTV proceeding the Commission estimated that approximately 55 to 65 percent of existing LPTV stations and 80 to 90 percent of all TV translators would be able to continue to operate and that operations in or near major urban areas would be most affected. *Sixth Further Notice of Proposed Rule Making*, MM Docket No. 87-268, 11 FCC Rcd 10968 (1996).

¹⁹ There are currently 1,599 such stations, both VHF and UHF, commercial and noncommercial. *Public Notice*, "Broadcast Station Totals as [sic] August 12, 1999."

²⁰ See Section 3004 of the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251, approved August 5, 1997; see also *Report and Order* in ET Docket No. 97-157 12 FCC Rcd 22953 (1998); see also *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997), *recon. granted in part, denied in part Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 7418 (1998), *second recon. granted in part, denied in part Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in MM Docket No. 87-268, 64 FR 4322.

television stations in the reduced spectrum. In the meantime, however, numerous LPTV stations will be displaced.²¹ Many will have to find new channels; some will be unable to do so and will have to cease operating.²² As we have stated, revisions to the DTV Table to protect or otherwise accommodate LPTV stations "would, by their very nature, pose restrictions on our choice of allotments for full service DTV stations."²³

B. Current Measures to Ameliorate Station Displacement

9. In recognition of the severe consequences the transition to digital television will have on many stations in the LPTV service, the Commission took a number of steps intended to ameliorate those consequences. Although in the DTV proceeding we retained the secondary status of LPTV and TV translator stations, we estimated that the steps we were taking would permit hundreds of these stations to continue to provide service to their viewers. We allowed LPTV and TV translator stations that are displaced by new DTV stations or allotments to apply for a suitable replacement channel in the same area. We amended our rules to provide that such applications would be considered on a first-come, first-served basis, without waiting for the Commission to open a low power application filing window.²⁴ We afforded displacement relief applications priority over all other pending LPTV service applications not related to displacement.

10. We stated that we would not open windows for filing applications for new LPTV and TV translator stations until existing low power licensees had an adequate opportunity to assess the impact of the DTV Table on their stations and to seek displacement relief, if necessary.²⁵

²¹ For example, approximately 260 LPTV stations operate on a channel from channel 60 - 69 and are required by law to vacate these channels by the end of the DTV transition period or earlier if they cause interference to primary services using these channels.

²² As an indication of the extent of potential displacement, on June 1, 1998, 548 LPTV stations and 472 television broadcast translator stations filed "displacement relief" applications for operation on a different channel. Of these 303 applications were filed by stations on channels 60 - 69. These consisted of 116 LPTV and 187 translator applications. Over 280 applications in over 100 groups were mutually exclusive and the parties were given time in which to try and resolve their situations. As a result, the number of mutually exclusive applications has been reduced to 98 in 40 groups. Since then, we have received other displacement relief applications, bringing the total received to 814 LPTV and 772 TV translator applications; about 750 of the displacement relief applications have been granted.

²³ *Memorandum, Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, *supra* at 7462.

²⁴ Under this process, the LPTV licensee requesting a channel or related facilities change submits an application for the requested change. If no other prior or contemporary requests for that channel have been made within the same area and the application is acceptable for filing, the Commission proposes grant of the application. At the end of the thirty day period for filing comments or petitions to deny, if no such filing have been made, the application is granted.

²⁵ *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, *supra* at 7466.

This was done to maximize the availability of alternate channels and allow the Commission to focus its administrative resources on the processing of displacement relief applications. Displacement relief is now being extended to licensees and permittees whose facilities are predicted to conflict with DTV stations or where there is an otherwise "reasonable expectation" of displacement.²⁶ We provided that displaced stations may seek modifications other than channel changes, including, where necessary, increases in effective radiated power up to the maximum allowed values.²⁷

11. We stated that we would permit LPTV and TV translator stations to operate until a displacing DTV or new primary service provider is operational. We are continuing to permit LPTV operations on all existing TV channels, including channels 60-69, so long as these operations do not cause harmful interference to any primary operations, and we are allowing displaced LPTV stations to request operation on these channels on a non-interfering basis. We found several of our interference protection rules for LPTV operations to be overly restrictive²⁸ and adopted rule changes to provide stations with additional operating flexibility.²⁹ We permitted the negotiation of interference agreements among LPTV and TV translator station operators.³⁰

12. In addition, we stated that we would entertain requests to waive the LPTV protection requirements where applicants could demonstrate that their station proposal would not cause any new interference to the reception of analog broadcast television stations.³¹ We stated that we would entertain waiver requests for LPTV or translator stations proposing co-located, or nearly co-located, facilities to those of TV broadcast analog stations operating on the first adjacent

²⁶ On reconsideration we clarified that we would consider an LPTV or TV translator station eligible for displacement relief where interference is predicted either to or from an allotted DTV facility and stated the circumstances under which we would assume an LPTV is impacted by a DTV allotment. Engineering showings of predicted interference are also being submitted to demonstrate the need for operation on a different channel. *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, supra* at 7465 and n. 79.

²⁷ *Id.*

²⁸ *Sixth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 14588 (1997) at Para 145.

²⁹ *Id.*

³⁰ *Id.*

³¹ An application for a station in the LPTV service will not be accepted if the proposed facility fails to meet the TV broadcast analog station protection provisions in Section 74.705 of the Commission's Rules. An LPTV proposal must protect the Grade B service contour of full service stations authorized on the same channel, the first adjacent channels above and below, the 7th channel above and the 14th and 15th adjacent channels below the channel proposed for the LPTV station. LPTV service stations authorized to operate with an effective radiated power more than 50 kilowatts must also protect full service stations authorized on the second, third and fourth adjacent channels above and below the proposed LPTV channel.

channel above or below, or the fourteenth adjacent channel below.³² We also stated that we would consider waiving the interference protection standards when applicants could obtain the written consent of potentially affected full service station licensees or permittees to the grant of a waiver. This would permit full service stations to concur that interference is unlikely, due to, for instance, the presence of terrain shielding, without absolving LPTV or translator licensees of the responsibility to eliminate interference caused to regularly viewed full service TV signals.

13. We replaced the then-existing transmitter power limits in the LPTV service with limits for effective radiated power, in effect increasing the power limits for the service. Finally, on reconsideration of the *Sixth Report and Order*, we identified a number of cases in certain areas of the country where it was found possible to avoid using a channel occupied by low power stations by providing full service stations with an equivalent alternative DTV channel.³³ Accordingly, we made 64 DTV channel changes eliminating 36 co-channel conflicts with one or more low power stations.

14. The Commission also amended the LPTV service rules to specify the same co-channel desired-to-undesired signal protection ratios applicable to full service stations seeking to modify allotments in the initial DTV Table.³⁴ In addition, with regard to adjacent channel operation where a DTV station is immediately above an analog LPTV or translator station in frequency, we required that such DTV stations cooperate and maintain the necessary offset to eliminate interference to the LPTV or translator station. By these actions, we sought to allow new LPTV and translator service and to maintain existing service where there is a relatively small increased risk of interference or a relatively small incremental costs for full service stations.

15. Despite all of the measures that we have taken to mitigate the impact of the DTV transition on stations in the LPTV service, as outlined above, that transition will have significant adverse effects on many stations, primarily LPTV stations operating in urban areas where there are few, if any, available replacement channels. Although we have previously rejected pleas by low power advocates to grant them full primary status, we have not explored the option of granting something less than full primary status, such as the Class A status suggested by CBA. Indeed, there could be some advantages to such a Class A service. As we noted above, the greater stability that Class A status could provide such stations, many of which are small

³² We did, however, indicate that, until we gain experience with nearly co-located operations, we would be inclined to limit consideration of such waiver applications to applications for displacement relief filed by LPTV and translator licensees in jeopardy of losing their channels.

³³ *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, *supra* at 7462.

³⁴ Most of the LPTV interference protection standards are defined in terms of desired-to-undesired signal strength ratios ("D/U ratios"). Interference is not predicted wherever these ratios are met or exceeded. For example, a co-channel protection ratio of 45 dB means that at points along a station's protected signal contour, the predicted field strength (D) of the protected signal must be at least 45 dB stronger than the predicted field strength (U) of the potentially interfering signal.

businesses, may enable them to make long term commitments to continuation of service, expansion of service (including digital operations), station upgrades and program production and purchases. Moreover, the comments filed in response to the CBA petition indicate that such status would be of tremendous benefit in obtaining the financial backing necessary to these ends. Finally, such status could remove the cloud over qualifying LPTV service stations that, even if they were to weather the DTV transition and possible displacement, they could be displaced or eliminated at any time by additional DTV stations by new entrants or by future primary services. On the other hand, Class A stations need not threaten the conversion to DTV because their "less than full" primary status could be tailored with appropriate safeguards. Accordingly, we herein consider whether and how to craft a Class A service with some measure of primary status for qualifying stations, and we seek comment in this regard.

C. The CBA Petition

16. On September 30, 1997, the Community Broadcasters Association filed a Petition for Rule Making requesting that Part 73, Subpart E of the Commission's Rules be amended to create a Class A low power television service that would afford primary protection status to the members of the Class; the petition was amended on March 18, 1998.³⁵ On April 21, 1998, the Commission gave public notice of the filing of the petition, as amended (RM-9260), and sought public comment.³⁶

17. CBA proposed that Class A stations be regulated as television broadcast stations, except for rules related to station power or the manner in which the stations were initially authorized as LPTV stations.³⁷ Initial applications to attain Class A status would have to be filed within one year of the effective date of the rules for the new service. These applications would be considered minor change applications, not subject to the filing of competing applications. They could not propose a channel change or facilities changes that would extend a station's currently protected service area. Under the proposal, an applicant would be required: (1) to demonstrate that for the period of 3 months immediately preceding submission of the application, its LPTV station complied with the minimum operating schedule for TV broadcast stations (47 C.F.R. Section 73.1740) and broadcast not less than 3 hours in each calendar week of locally produced programming, (2) to show that the Class A station would not cause interference within the Grade B contour of any television station operating on a channel specified in the TV Table of Allotments (47 C.F.R. Section 73.606(b)) or the DTV Table of Allotments (47 C.F.R. Section

³⁵ All references to proposed Part 73 amendments, unless otherwise specified, are to the amended rules as set forth in Appendix A to the March 18, 1998, "Amendment to Petition for Rule Making."

³⁶ *Public Notice*, "Petition for Rule Making Filed for 'Class A' TV Service," *supra*.

³⁷ For example, Class A stations would not be confined to use of channels designated in the analog or digital TV allotment tables, nor would they be subject to analog full service TV minimum distance separations, certain DTV technical application evaluation criteria, or the Commission's multiple ownership and cross ownership restrictions.

73.622(b)) as of the date of filing of the Class A application or within the protected contour of any prior-authorized LPTV or TV translator station, (3) to certify that on and after the filing of the application that its station operated and would continue to operate in compliance with the pertinent regulations of Part 73. Class A stations would be protected from interference within their principal service contours, could apply for a change of channel to resolve interference conflicts without being subject to competing applications, could seek interference-free operations at certain higher levels of effective radiated power ("ERP") than now permitted in the LPTV service, and could apply to convert to digital operation on their existing channels or seek authorization on an additional channel for this purpose where interference standards could be met.

18. On August 27, 1998, CBA filed a "Report of Ex Parte Communication" (*ex parte* letter") indicating that, as a result of conversations with Mass Media Bureau personnel, it would clarify some parts of its proposal. Principally, CBA clarified that Class A television stations should not be permitted to cause interference with DTV stations within service areas that replicate their NTSC service areas, even if DTV stations were to commence operation at less than the allotted transmission parameters; that the protected service area for Class A stations be defined in the same manner as that for LPTV stations (Section 74.707(a) of the Commission's Rules) or the equivalent coverage for digital operations; that its proposal to exempt Class A stations from Section 73.622 of the Commission's Rules was intended to permit stations to operate digitally without being limited to channels listed in the DTV Allotment Table (other parts of that rule, such as computations of distance, might be applicable to Class A.)

D. Comments on the CBA Petition

19. More than sixty comments were filed in response to the CBA's rulemaking petition. We here summarize the views of commenters on whether a Class A television service should be established. A discussion of specific issues raised in the comments is set forth in Appendix C. A large majority of the commenters favored the creation of a Class A service, pointing to the service LPTV stations now provide, especially local programming, as well as programming designed for niche markets and racial and ethnic minorities. They note that LPTV's secondary status is jeopardizing continued provision of that service. This is primarily due to the advent of digital television (DTV), which will necessitate displacing LPTV stations that have been utilizing on a secondary basis the channels now allotted for full service digital broadcasting. Commenters say some displaced LPTV stations may not be able to find suitable alternative channels. Even those that will not be displaced note the difficulty of making business plans and attracting capital when their stations can be displaced at any time by full service stations. According to commenters, this, in turn, hinders their ability to expand and provide programming and training opportunities. Additionally, supporters of the CBA petition point to the comparatively high degree of female and minority ownership of LPTV stations, and the diversity of voices that this ownership brings to broadcasting, and argue that this will be jeopardized if primary status is not granted qualifying Class A stations. Commenters well disposed to the CBA petition proposed specific changes on issues including local programming requirements, station power levels, community coverage and interference protection. The National Translator Association (NTA) supports the concept of a Class A service, but states that translators should have the opportunity

to qualify for the benefits of Class A status on the basis of carriage of the local programming of a primary station within that station's Grade B contour; that the entry opportunity should be ongoing rather than limited to a fixed period of time; and that Class A, LPTV and translator stations should be on equal footing with respect to interference protection, facilities modifications and gaining additional channels for digital operations.

20. Some full service broadcasters and broadcast associations oppose the CBA petition. They primarily assert that it is currently unknown what will happen when 1500 digital television stations "light up." Commenting parties note the planning factors for DTV are aggressive and unproven. Should more interference occur among DTV stations in the real world than is currently foreseen, it is virtually certain, they assert, that the Commission will need to revise its methods of spectrum utilization to resolve those problems and should have as much spectrum to work with as possible. This flexibility, they state, was built into the DTV Table of Allotments. If qualifying LPTV stations are given primary status, full service stations will be unable to use the channels occupied by Class A LPTV stations in resolving interference issues and, thus, the DTV Table of Allotments would be undermined. Further, they argue that LPTV licensees have been aware that they were a secondary service since the LPTV service was authorized and that this has been repeatedly recognized and relied upon in the DTV proceeding. Commenters state that the Commission took full account of the local programming benefits provided by LPTV when it sustained its secondary status in the DTV proceeding -- a decision, they note, that has withstood judicial challenge. At best, they believe, it is premature to consider the CBA proposal, which should only be considered after the transition to digital, including the complicated task of making any necessary spectrum adjustments. The Association of America's Public Television Stations (APTS) is concerned that Class A stations could hamper the ability of small public TV facilities to increase their service areas through facilities modifications, that primary Class A stations could foreclose opportunities for displaced public translators to find replacement channels, and that Class A stations could hinder the replacement of the reserved non-commercial channels deleted from the NTSC allotment table in order to accommodate digital allotments during the DTV transition.

21. Finally, others commenters, while not opposing the CBA proposal generally, seek to ensure that it would not adversely affect their services. These include public safety and other land mobile radio interests who seek to ensure that Class A stations not have primacy over land mobile and public safety services within frequency bands allocated for their operations.

III. DISCUSSION

22. We seek comment on whether and how to create a Class A primary television service for qualifying stations in the LPTV service. We are persuaded that many LPTV stations provide important local programming to their communities and are often a community's only local TV station. We tentatively conclude that the local service they provide their audiences warrants protection to the extent possible, and we seek comment on this tentative conclusion. Some form of primary service classification could benefit qualifying stations by providing greater stability

and, as CBA puts it, "assurance of a means to continue to deliver their service to the public."³⁸ This stability could be of assistance to these stations in attracting financial support, advertisers and cable carriage. It could also assist them in planning for future local programming, expansion, and hiring efforts and help them to more securely invest in new equipment for eventual digital television operations. Finally, creating a Class A primary service could continue to foster the minority, female and small business ownership of broadcasting facilities that has been a hallmark of the low power television service.

23. We also wish to consider if there are circumstances under which it would be appropriate to extend opportunities for Class A status to certain television translator stations. Translator stations deliver television programming to remote communities and are often a community's only means of receiving free off-air television programming, particularly at locations where the signals of the nearest TV stations are blocked by mountainous terrain.³⁹ The National Translator Association believes that a translator should be able meet a minimum local programming qualification for Class A status by rebroadcasting the local programming of a full service station within that station's Grade B contour. We seek comment on this proposal. We also ask if there are other situations that would warrant Class A status for translators; for example, translators that provide the only television service to a community.

24. While CBA has provided strong arguments in support of the creation of a Class A service, altering the status of LPTV at this highly fluid juncture in the transition to digital television would require a careful balancing of many competing considerations. Perhaps most critically, we must ensure that the transition of full power television to digital broadcasting is not undermined. We must ensure our capacity to accommodate necessary adjustments in full power stations' operating parameters as digital service is being implemented. Therefore, the details and precise characteristics of any Class A low power service, particularly as to interference with full power stations, would have to be carefully crafted if our goals of a stable, protected low power service and a supple full power digital environment are all to be compatible and attainable. We are also concerned that the creation of a Class A LPTV service not unduly disrupt important services provided by secondary service facilities such as television translators, including public translators and translators that serve rural areas. We turn now to these matters.

A. Defining Interference Protection Rights and Responsibilities

25. The most important question before us is what does "primary" service mean in this context? To what level of protection should Class A stations be entitled? This issue is very much in dispute in the comments and is, in our view, the most problematical issue to be resolved. A stable future for such stations will be affected by many factors, foremost among these, the

³⁸ CBA comments at 4.

³⁹ Translator licensees could elect to become LPTV operators and adapt their operations so as to meet any qualifications we might establish for Class A status.

implementation of the DTV service. Significant DTV issues include protection to allotted and authorized service, needs of DTV stations to make adjustments to correct unforeseen problems, need to accommodate DTV stations allocated on non-core channels, maximization of DTV service areas, and requests for DTV allotments by new entrants. There are also NTSC TV protection issues, which involve pending applications for new stations and petitions to amend the TV allotment table, as well as pending and future facilities modification requests. Appropriately balancing these factors is, we believe, a worthwhile undertaking.

1. DTV Protection Issues

26. *Service Replication.* We tentatively conclude that Class A status cannot be permitted to interfere with DTV broadcasters' ability to replicate insofar as possible their NTSC service areas, a primary goal in the DTV proceeding.⁴⁰ We seek comment on this tentative conclusion. We have described the transition to digital television as an "historic change" that will alter the very nature of broadcast television.⁴¹ The Commission has gone to great lengths to ensure a smooth and rapid implementation of the DTV service and the benefits that it will bring to the American people. After many years of careful planning and preparation, the DTV rollout has begun and approximately 75 DTV stations are now operating.

27. At a minimum, we intend for Class A stations to protect the service areas resulting from the DTV allotment parameters and any additional DTV service authorized by construction permit or license or proposed in a DTV construction permit application before the filing of a Class A TV application. As stations under Part 73 of our rules, we believe it would be appropriate for Class A applicants to determine noninterference to DTV in the same manner as applicants for full service NTSC facilities. In this manner, Class A facilities would not be permitted to increase the population receiving interference within a DTV broadcaster's replicated service area and any additional area associated with its DTV license or construction permit. We would not permit Class A stations to cause "de minimis" levels of interference to DTV service.⁴² Criteria for protecting DTV service are given in Sections 73.622 and 73.623 of our rules and in

⁴⁰ Service areas to be replicated approximate the areas within the NTSC Grade B service contours. DTV channels and associated allotment powers and antenna heights were chosen to achieve service area replication insofar as possible. Allotment parameters are specified in Appendix B of the second DTV reconsideration order. (*Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in MM Docket No. 87-268, 64 FR 4322 (1998).

⁴¹ *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, *supra* at 7420.

⁴² In the DTV proceeding, we permitted DTV stations in the initial allotment table to decrease by two percent the populations served by NTSC and other DTV stations, not to exceed a total reduction of more than ten percent. Unlike this DTV allowance, applicants seeking facilities modifications of full service NTSC stations similarly may not cause any additional interference to DTV service. See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 7418 (1998).

OET Bulletin 69.⁴³ We seek comment on these proposals.

28. *Allotment Adjustments.* There are other DTV issues to be worked out in this proceeding. The National Association of Broadcasters and other commenters point out that channel changes and adjustments to station facilities may be necessary to correct unforeseen technical problems among DTV stations. For example, it was necessary to make DTV Table allotments on adjacent channels at noncollocated antenna sites in the same markets, which raised concerns among broadcasters over possible adjacent channel interference.⁴⁴ In addition to changing some of those allotments, we stated that we would address these concerns by tightening the DTV emission mask and by "allowing flexibility in our licensing process and for modification of individual allotments to encourage adjacent channel co-locations..."⁴⁵ We also provided broadcasters with flexibility to deal with allotment problems; for example, by permitting allotment exchanges in the same or adjacent markets. While we have confidence in our DTV Table, situations may arise which warrant corrective action. Our initial experience in implementing DTV has gone smoothly, and we are optimistic that significant engineering problems with allotments will seldom occur. Yet, any requirement to protect Class A stations must not restrict our flexibility to make necessary adjustments to DTV allotment parameters, including channels changes. Accordingly, we propose that Class A primary status include this "safety net" provision.

29. We stated in the DTV *Sixth Report and Order* that we would review all requests for modification of the DTV Table for their impact on LPTV stations and "strongly advised" industry coordinating committees to consider LPTV and TV translator stations in developing proposed modifications to the DTV Table and to avoid impact on such stations wherever possible.⁴⁶ We propose that this provision also extend to Class A stations. Commenters should address the extent of protection Class A stations should afford to and receive from full service DTV stations. Should Class A stations have their "primary" status limited to the extent that, in the event adjustments to the DTV Table have to be made that require substitution of a new channel, and this can *only* be done through use of a channel occupied by a Class A station, the Class A station will have to be displaced? In that event, should the affected Class A station be permitted to exchange channels with a DTV station, provided it could meet interference protection requirements on the exchanged channel? Should broadcasters be permitted to swap DTV allotments affecting Class A stations where there is no need to correct a significant technical

⁴³ OET Bulletin 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference* (July 2, 1997), available at FCC Internet address <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

⁴⁴ *Memorandum Opinion and Order on Reconsideration of Sixth Report and Order*, *supra*, at Paragraph 95.

⁴⁵ *Id.*

⁴⁶ DTV *Sixth Report and Order* at Paragraph 182. See also the *Notice of Proposed Rule Making* in ET Docket No. 99-34, "An Industry Coordination Committee System for Broadcast Digital Television Service", FCC 99-8, Released February 3, 1999, at Paragraph 4. Paragraph 16 of this *Notice* seeks comment on whether coordinating committees should assist with coordination of certain LPTV and TV translator activities, including stations affected by the implementation of DTV.

problem; for example, as a cost saving measure?

30. *Service Area Increases.* Another issue concerns "maximization" of DTV service; *i.e.*, facilities increases to enlarge DTV service areas beyond NTSC-replicated service areas. In the DTV proceeding, we permitted broadcasters to request facilities increases that would enable them to provide service to larger audiences, and this was a partial basis for establishing the *de minimis* interference allowance. We seek comment on whether a Class A station should be required to yield to subsequently increased or relocated facilities of DTV stations or should have to protect a DTV station's ability to maximize its facilities. Conversely, should the service areas of authorized or proposed Class A facilities be protected against subsequent DTV application proposals to increase or modify service areas beyond the areas produced by a station's DTV allotment parameters?

31. *New DTV Entrants.* We seek comment on whether existing Class A stations should be protected by new entrants seeking new DTV channel allotments and whether Class A stations should be considered as primary television broadcast stations with respect to future primary services; *i.e.*, their operations on "core" channels (channels 2-51) could not be displaced by future primary services.⁴⁷ Without protection against displacement by future primary services, these stations would still lack the certainty and stability that they seek and that we tentatively believe are important to their continued viability as significant sources of local programming.

32. *Hybrid Primary Status.* We seek comment on whether Class A service should have a hybrid primary status that protects existing service while protecting Class A stations against new DTV and future primary services on core spectrum. We recognize our long standing policy of encouraging new entrants and our diversity goals for broadcasting. In this instance we believe that consideration should also be given to the preservation and stability of an existing service to the public, for which investments have already been made. We note that prospective Class A stations may be required to incur substantial costs to change channels or relocate their stations in order to prevent DTV or NTSC interference conflicts. It has been stated that costs of relocating and rebuilding an LPTV station to avoid a conflict can be as high as \$100,000, even where a replacement channel is available.⁴⁸ These costs cannot and should not have to be borne again and again in order for a station to continue serving its community. We seek comment on whether Class A station licensees should be afforded the certainty that their stations will not be vulnerable to displacement by new and future DTV stations or other primary services.

⁴⁷ Section 3003 of the Balanced Budget Act of 1997 mandates that the Commission auction recaptured broadcast channels between channels 2-59. Citation at footnote 20, *supra*.

⁴⁸ Testimony of Ron Bruno at the Hearing on Regulatory Classification of Low-Power Television Licensees before the House of Representatives, Committee on Commerce, Subcommittee on Telecommunications, Trade and Consumer Protection (April 13, 1999). Mr. Bruno operates LPTV stations in the Pittsburgh, PA metropolitan area that air locally produced programs. In this Hearing, Mike Sullivan, Executive Director of the CBA, testified that an LPTV station in Lima, Ohio spent \$100,000 to avoid interference conflicts and remain in operation.

33. We seek comment on these proposals. Should interference protection by DTV allotment petitions for new DTV service be given to earlier-filed Class A station applications, in addition to authorized stations? We note that petitions for new DTV allotments must protect the DTV Table by meeting minimum separation distances between allotment reference points.⁴⁹ Should distance separations be used to protect Class A stations? If so, which distances should apply? Alternatively, should the service contours of Class A stations be protected, and are the protection criteria in Section 73.623(c) of our rules suitable for this purpose?

2. NTSC TV Protection Issues

34. *Authorized Service.* With regard to NTSC television, we agree with CBA that applicants for Class A stations should protect previously authorized service within a station's Grade B contour in the manner given in Section 74.705 of the LPTV rules. LPTV stations have been engineered to avoid causing interference to the Grade B contour of full-service stations, often using directional antennas to avoid such interference and, for this reason, continuation of the current standards would appear to be more appropriate than a different form of interference protection, such as minimum distance separations between stations. We believe that Class A station applicants should be permitted to utilize all means for interference analysis afforded to LPTV stations in the DTV proceeding, such as use of the Longley-Rice terrain-dependent propagation model. To provide additional stability, we would consider not imposing a requirement that Class A stations protect NTSC stations at locations beyond their Grade B contours wherever their signals are regularly viewed.⁵⁰ In this regard, we propose not to impose a requirement on Class A that is imposed on LPTV and translator stations. As a practical matter, over the years we have received very few complaints of interference caused by LPTV stations to full service reception and very few, if any, of these have been widespread or uncorrectable.

35. *Pending Application and Allotment Proposals for New NTSC Stations.* Additionally, we have questions concerning protection of pending application and allotment proposals for new NTSC full power stations. Altogether, these proposals could result in approximately 250 new TV stations, most located in the eastern half of the country or in the western coastal region. These include approximately 75 groups of mutually exclusive applications involving 325 applications; some of these applicants are scheduled to participate in the first broadcast auction

⁴⁹ Section 73.623(d) of the Commission's Rules.

⁵⁰ 47 C.F.R. section 74.703(b). The Report and Order establishing the LPTV service allows consideration of certain mitigating circumstances in the event of interference caused beyond a TV station's Grade B contour; for example, the programming of the signal being degraded can be received from another station or interference occurs due to anomalous reception conditions such as a viewer's use of a taller than normal outdoor receiving antenna. *Report and Order* in BC Docket No. 78-253, *supra*.

in late September.⁵¹ Also pending are applications and channel allotment rule making petitions involving channels 60-69 and requests for waiver of the 1987 TV filing freeze,⁵² which account for more than 180 of the potential new NTSC stations. The channel 60-69 application proposals for locations outside of the freeze areas include 45 applications in 9 mutually exclusive groups and two non mutually exclusive ("singleton") applications. There are approximately 95 "freeze waiver" applications in 35 mutually exclusive groups and 85 such singleton applications. Also pending are about 55 petitions to add allotments to the TV Table of Allotments; many of these involve channels 60 -69 or freeze waiver requests.

36. We have previously stated that we would seek to accommodate applicants and petitioners who have pending proposals for channels 60-69, none of which can be granted due to the reallocation of these channels, or freeze waivers that conflict with DTV stations or allotments.⁵³ In so doing, we acknowledged that new NTSC service would foster competition and create opportunities for increased broadcast diversity.⁵⁴ We stated that these parties will be given an opportunity to seek replacement channels below channel 60, where this is possible, and that the details of the amendment opportunity period would be announced by public notice. This public notice will be issued shortly.

37. Releasing the NTSC amendment opportunity *Notice* soon after the adoption of the Class A *Notice of Proposed Rule Making* will assist us in gauging the impact of NTSC channel changes on LPTV and TV translator stations and, thus, the extent to which new NTSC service would limit opportunities for Class A service. Existing LPTV service, and to a lesser extent TV translator service, is at some unknown risk of channel displacement by potential new NTSC stations that will be facilitated by the NTSC amendment opportunity. It is not possible to approximate the magnitude of risk without first evaluating the NTSC channel change proposals filed in the amendment period. Based on our experience in developing the DTV allotment table, we believe it may be difficult, if not impossible, for many NTSC applicants and petitioners to find replacement channels consistent with our interference protection requirements. It is also likely, however, that many of the NTSC new-station proposals will no longer be pending if and when we begin authorizing Class A service; given, for example, that non-freeze waiver applications will be auctioned in September. Our proposal that Class A applicants protect

⁵¹ See *Closed Broadcast Auction - Notice and Filing Requirements for Action of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits Scheduled for September 28, 1999*. Public Notice, DA 99-1346 (released July 9, 1999).

⁵² Since 1987, the Commission has not accepted NTSC allotment petitions or applications for new stations within certain distances of 30 major television markets. See *Order*, RM-5811, Mimeo No. 4074 (July, 1987).

⁵³ See *Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order*, 12 FCC Rcd 22953 (1998) and see also *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 64 FR 4322 (1998).

⁵⁴ See, for example, the channel 60-69 *Report and Order*, *Id.* at Paragraph 40.

authorized NTSC stations would apply to any now-pending station proposals that would be earlier-authorized. We invite comment and analyses on the extent to which new NTSC service could affect the viability of a new Class A service.⁵⁵

38. There is also the question of interference protection rights for any NTSC application and allotment proposals still pending at the time Class A applications are filed, if we were to adopt a Class A service. This is a difficult policy issue with equities on both sides. There are NTSC station proposals in applications that have remained pending for several years through no fault of the applicants.⁵⁶ Many other applications were submitted in response to our decision in the DTV proceeding to permit a last filing opportunity for new-station proposals that were then already under development.⁵⁷ We also maintained and protected vacant NTSC allotments outside of the freeze areas that are the subject of pending applications, and avoided creating DTV allotments that would conflict with these proposed new NTSC allotments.⁵⁸ And, as we noted above, new NTSC service would increase competition and enhance broadcast diversity.

39. We also recognize that hundreds of new NTSC full power stations could potentially jeopardize the continued operations of prospective Class A LPTV stations, perhaps including LPTV stations that began operating long before many of the NTSC proposals were even conceived. LPTV licensees have invested heavily in the construction and operation of their stations, and LPTV stations have an established presence in their communities, including substantial locally produced programming. Failure to protect Class A stations from later-authorized new-station NTSC proposals could affect the extent of relief and stability offered by a Class A service, thereby minimizing its potential value to viewers. The number of mutually exclusive LPTV and translator displacement applications filed to date suggests that additional replacement channels may not be available in some areas. We are concerned that existing services be preserved wherever possible.

40. We seek comment on how we should balance this difficult policy issue. Should Class A applicants be required to protect new NTSC TV station proposals in pending applications or

⁵⁵ A number of mutually exclusive LPTV and TV translator applications, including displacement relief applications, will participate in the September broadcast auction. We strongly advise applicants to consider the likelihood of any channel displacement that could result from the authorization of new NTSC stations or channel changes by applicants and petitioners eligible to file in the NTSC amendment opportunity window.

⁵⁶ Processing of these applications was frozen as the result of a court decision invalidating the Commission's comparative policy in *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993). Some of these pending applications have since been involved in settlements among the parties.

⁵⁷ In the DTV proceeding, we established July 25, 1996 as the last date for filing rule making petitions to add new channel allotments to the TV Table of Allotments and September 20, 1996 as the last date to file applications for new NTSC TV stations (except for applications filed in response to application cutoff lists). See *Sixth Further Notice of Proposed Rulemaking* in MM Docket No. 87-268, 11 FCC Rcd 10968 (1996).

⁵⁸ *Sixth Report and Order* in MM Docket No. 87-268, *supra*, at Paragraph 112.

allotment petitions? If not, should operating Class A stations be required to protect the actual service of later-authorized facilities? Alternatively, should applicants and allotment petitioners for new NTSC stations be required to protect earlier-authorized Class A stations? Are there measures we could adopt that, in some instances, could accommodate both new NTSC stations and prospective Class A stations? For example, should we permit affected parties to negotiate interference agreements? This might help in situations where interference between proposed NTSC and Class A stations would be predicted only near the outer reaches of the station's protected areas. Should consideration be given to protecting existing LPTV or proposed NTSC stations that provide or would provide the only television service, or local service, in a community? We invite comments on this difficult issue.

41. *NTSC Facilities Modifications.* An issue also arises regarding Class A protection rights and responsibilities with respect to NTSC TV facilities modifications (minor changes); for example, stations site relocation or increased power. Considering that both facilities would be "primary" under Part 73 of our rules, we are inclined to favor a "first-in" approach for affording protection priority. Under this approach, protection rights between proposed NTSC TV facility modifications and initial and modified Class A stations would be given to the earlier-filed application. We would be disinclined to consider NTSC minor change and Class A applications to be mutually exclusive in the event one was filed before grant of the other. Priority to the earlier-filed application in such situations could result in much faster authorization of service. We invite comments on this proposal and whether the triggering event for interference protection rights should be the application filing date. We also ask in what manner NTSC proposals should protect earlier-filed Class A proposals. Should such protection be based on minimum distance separations between the stations or should such NTSC station proposals be required to provide contour protection to Class A stations in the manner that LPTV stations protect NTSC stations?

3. LPTV and TV Translator Station Protection Issues

42. We believe that Class A stations should protect the service contours of previously authorized LPTV and TV translator stations and must continue to accept interference from such stations. In this regard, we note that any "primary" service classification that would be given Class A stations would be a hybrid of current concepts of primary and secondary services. This is because we agree with CBA that Class A stations should have to protect existing LPTV and translator stations, which would not be the case with a full primary service. With this hybrid, Class A stations could have primary status with regard to translator and other secondary service applications filed in the future but not against existing secondary facilities. We envision carrying over the current contour protection standards (Section 74.707 of the LPTV rules) for interference protection among Class A stations and also between Class A stations and LPTV and TV translator stations; *i.e.*, Class A stations would continue to provide the same protection to translators and non-Class A LPTV stations as they did when regulated under Part 74. LPTV and translator stations would protect previously authorized Class A stations in the same manner. We further propose that Class A, LPTV and TV translators licensees, permittees and applicants be permitted to negotiate interference agreements in the manner now permitted in the LPTV service. Inasmuch as Class A stations would come from the LPTV service (at the least the initial stations), the

transition to Class A would appear to be the least disruptive by continuing the use of LPTV protection standards.

43. While this approach appears straightforward, we invite comments as to how these standards should be applied. Should applications to modify Class A facilities be required to protect previously filed LPTV and TV translator applications? Should applications for new stations and major changes in the two services be filed in the same windows and participate in the same auctions - excluding the initial applications for Class A status of stations that were first authorized in the LPTV service? What criteria should govern interference protection to and from digital Class A stations? In this regard, would it be appropriate to use the protection ratios applicable to DTV station facilities modifications?⁵⁹

4. Land Mobile Radio and Other Services

44. As indicated in the comments, land mobile radio services, including public safety services, now operate on designated channels in the channel 14 - 20 band in several major cities.⁶⁰ Public safety services will also be operating on reallocated TV channels 63, 64, 68 and 69 and other yet to be determined primary services will eventually occupy the remaining spectrum from channel 60 to channel 69.⁶¹ Congress has mandated that all broadcast operations on channels 60 - 69 cease at the end of the DTV transition period.⁶² In reply comments, CBA indicates that compliance with Part 73 rules would ensure protection to land mobile operations on channels 14 - 20. We concur that spectrum allocated for land mobile operations and authorized land mobile service should continue to be protected, and we propose to apply to Class A stations the protection requirements currently contained in section 74.709 of the Commission's Rules. We also would continue the requirements in this rule concerning protection of the Off Shore Radio Service in the Gulf of Mexico region.⁶³ Finally, we are inclined to carry over to the Class A service the "earliest user" provisions for protecting cable television and the other services listed in section 74.703(d), to which we would add "earlier used" TV translator input channels. The Commission established this rule to control interference problems at cable TV headends, the output channel of cable system converters or the output of system converters used in the Multipoint Distribution and Instructional Fixed Television Services. These protections have minimized disruption to existing services and have not proven burdensome in the LPTV service. We invite comment on these matters.

⁵⁹ 47 C.F.R. §73.623(c).

⁶⁰ See 47 C.F.R. §74.709.

⁶¹ See *generally Report and Order* in ET Docket No. 97-157, 12 FCC Rcd 22953 (1998), *recon den. Memorandum Opinion and Order* in ET Docket No. 97-157, FCC 98-261 (1998).

⁶² See Section 3004 of the Balanced Budget Act of 1997, *supra* at footnote 20.

⁶³ Section 74.709(e) of the Commission's Rules provides that LPTV or TV translator applications for channels 15 - 18 will not be accepted for specified locations in the area of the Gulf of Mexico.

5. Class A Protected Service Area

45. CBA originally proposed that a Class A station be protected from interference within its "principal city grade contour," without defining that term. It later clarified in its *ex parte* letter that protected areas for analog stations should be defined in terms of contour definitions given in the LPTV rules or "an equivalent coverage area if operating digitally." LPTV stations protect other LPTV and TV translator stations to the following signal contours: 62 dBu for stations on channels 2 - 6, 68 dBu for stations on channels 7 - 13, and 74 dBu for stations on channels 14 and above, in combination with the Commission's F(50,50) propagation curves.⁶⁴ We find merit in continuing for Class A television the protected areas now afforded LPTV stations. This would fit well with our primary purposes of preserving existing service provided by LPTV stations and minimizing disruption or preclusion of other services. We have no readily available contour values for digital stations other than those values that define DTV noise-limited service: 28 dBu for channels 2 - 6, 36 dBu for channels 7 - 13, and 41 dBu for channels 14 and above, in combination with the locations of the predicted F(50,90) field strength.⁶⁵ We invite comment on the protected service area of Class A stations and, in particular, on whether other field strength values might be better suited for analog and digital Class A service.

B. Class A Eligibility

46. *Opportunity Period to Apply for Class A Status.* CBA contemplates that Class A conversion would be a one-time event. Under its proposed section 73.627(a), qualifying stations in the LPTV service would be able to apply for Class A status only within one year after the effective date of the rules adopting a Class A service. Some commenters object to this aspect of the proposal and believe that Class A eligibility ought to be ongoing as LPTV stations become qualified. On the one hand, we believe that there may be practical limits on the number of LPTV stations that could become Class A stations. Based on our findings in the DTV proceeding, we believe there is insufficient spectrum to provide primary status on a wholesale basis to the more than 2,200 LPTV stations. On the other hand, is it unduly restrictive to limit the opportunity to convert to Class A status to only those stations that could qualify in the twelve month period following conclusion of this proceeding, ignoring other LPTV stations that provide similar local service but at a later date, for example, stations who were awarded LPTV licenses through the auction process? Accordingly, we seek comment on the correct balance to strike between these competing considerations.

47. *Qualifying Criteria.* Another issue is the qualifying criteria for Class A status. We seek comment on whether Class A applicants should be required to meet the definition of "Small

⁶⁴ 47 C.F.R. §74.707(a).

⁶⁵ 47 C.F.R. §73.622(e).

Business"⁶⁶ and provide a certain amount of local programming as more fully discussed below. We note that many LPTV stations operate as small businesses and that this would be consistent with our ongoing obligation to consider barriers affecting small businesses (for example, in the areas of spectrum and financing).⁶⁷ Commenters should address whether broader service eligibility criteria are needed to afford Class A opportunities to other types of LPTV licensees, such as educational organizations.

48. CBA proposed that Class A applicants be required to show that for the three months preceding filing they have (1) provided three hours per week of programming produced within the city grade service contour of the station, or produced within the city grade service contour of any of a group of commonly controlled stations operating in contiguous or closely grouped areas that carry common local or specialized programming not otherwise available to their communities and (2) have complied with the minimum operating schedule required for television stations.

49. Given the benefits that would accrue to an LPTV station converting to Class A status, and the difficulty in balancing the stability of qualifying LPTV stations with the preclusive impact on other services, we seek comment on whether these proposals are appropriate or whether more stringent or well-defined qualifications would be in order. For example, is "locally produced" too vague a criteria, as opposed to programming aired live or filmed in the community? We ask commenters to address this question. Should we require that some or all of the qualifying programming be informational in nature? In this regard, is it sufficient to rely on applicants' certifications of compliance with pertinent content regulations applicable to full service stations, also proposed by the CBA? Is three hours per week out of a potential 168 hours of broadcasting per week sufficient or should we require more (e.g., a minimum of seven hours per week or at least one hour per day of locally originated programming?) Should repeated programming or locally produced commercials count? Should local production requirements continue after the application has been filed? To ensure continued eligibility for Class A status, should licensees be required to certify annually as to their compliance with the local programming, children's informational programming and commercialization regulations and minimum operating hours? If a Class A station is to be sold, should the buyer be required to certify continued compliance with these provisions? Is three months a sufficient period in which to determine the commitment of an LPTV station to local origination to warrant awarding it Class A status? Are there alternative, possibly more objective, criteria that we could use to determine

⁶⁶ The general definition of the term "small business" is given in the Initial Regulatory Flexibility Analysis in Appendix A, hereto.

⁶⁷ Under Section 257 of the Telecommunications Act of 1996, the Commission is required to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and informational services...and must promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, promotion of the public interest, convenience and necessity." *See* Telecommunications Act of 1996, Pub. L. No. 104, Section 257, 110 Stat. 56 (1996).

which LPTV stations have made particular efforts to respond to the needs of their communities so as to justify an upgrade to Class A status? Would signal coverage or audience ratings provide such criteria?⁶⁸ Is there some other qualification criteria that would not involve the Commission in content regulation?

50. Statutory requirements that now apply to LPTV stations must also apply to Class A stations; for example, the prohibitions on the broadcasting of obscene material. In creating the LPTV service, the Commission determined that the "equal time" and "lowest unit charge" provisions in Sections 312(a)(7) and 315 of the Communications Act would apply to LPTV stations "to the extent their origination capacity permits...[T]he reasonable requests of legally qualified candidates for federal elective office who seek to purchase reasonable amounts of time or respond to their opponents messages must be acceded to, so long as they provide program material that is compatible with the station's origination equipment."⁶⁹ We believe that these statutory provisions should apply to all Class A stations, which, we expect, would be equipped with or have access to the necessary origination equipment.

51. Are there Part 73 rules with which Class A stations should not have to comply, including certain rules identified in the CBA petition or others such as the public inspection file⁷⁰ and main studio rules?⁷¹ If we do not apply the public inspection file rule to Class A stations, should we nevertheless apply the issue responsive programming requirement inherent in it to Class A licensees? Should Class A stations have to comply with the Part 73 requirements for informational and educational children's programming⁷² and the limits on commercialization during children's programming?⁷³ Are there current LPTV rules in Part 74, other than interference protection provisions, which should be carried over to a Class A service? Finally, what process should we use for Class A licensees who wish to revert to LPTV status?

C. Class A Applications

52. *Initial Class A Licenses.* Although CBA proposed that initial applications for Class A status should not include changes in channel or facilities changes that would increase a

⁶⁸ We realize that, often, LPTV stations are not rated by national audience rating services. This would not, however, preclude an LPTV licensee desiring Class A status from undertaking its own study of audience share or public acceptance.

⁶⁹ *Report and Order* in BC Docket No. 78-253 at para 105. Citation given in footnote 5, *supra*.

⁷⁰ 47 C.F.R. Sections 73.3526 and 73.3527.

⁷¹ 47 C.F.R. §73.1125.

⁷² 47 C.F.R. § 73.671.

⁷³ 47 C.F.R. §73.670.

station's coverage area, that initial Class A applications not be subject to the filing of mutually exclusive applications, and that Class A applicants be allowed to pursue a changes of channel or extensions of coverage area in separate applications filed simultaneously with initial Class A status applications, we do not believe that applicants should be permitted to file Class A facilities modification applications at the same time. The authorization process would be quicker and less complicated if modification applications were filed only after Class A status had been initially authorized. We therefore seek comment on whether initial Class A applications should be limited to the conversion of existing facilities to Class A status, with no accompanying changes in those facilities. Moreover, by protecting all existing facilities, including those of LPTV and translator stations, there should be no possibility of mutual exclusivity between or among Class A conversion applications. Accordingly, we propose that initial Class A applications be filed as "minor changes" and be processed in a manner consistent with such status.

53. We propose that all Class A applications would be filed on FCC Form 301, including all required exhibits. In the interest of streamlining the process, we seek comment on whether certifications of compliance with filing requirements would suffice in lieu of application exhibits? Should applicants certify that their stations comply with relevant interference standards in lieu of detailed analyses? Should a special application form be developed to expedite the process? Development of a new form for Class A TV could help to expedite application processing. In this regard, we contemplate that, consistent with our streamlining actions,⁷⁴ we would require electronic filing of Class A applications irrespective of the particular form to be used.

54. *Class A Facilities Changes.* The definition of major and minor facilities changes is another important issue to be considered. CBA submits that Class A stations should be permitted to file applications to improve their facilities without having to wait for filing windows. The LPTV service rules define "minor" changes to be changes to existing facilities such as an antenna site relocation of less than 200 meters or, more generally, any changes (other than a channel change) that do not extend a station's protected signal contour in any direction.⁷⁵ This definition has ensured that LPTV minor change applications are not mutually exclusive with other applications. However, it has often hindered stations from making desired or needed changes such as power increases, antenna changes, or site relocations. These changes often must be requested in application filing windows and are subject to competing mutually exclusive applications and the auction process. As a result, stations are finding it difficult to improve their facilities or respond to urgent situations, such as loss of their transmitter site. Stations with critical needs have been forced to seek operation under special temporary authority.

55. We agree that the current minor change provisions in the LPTV service may be too restrictive. We seek a "minor change" definition that would permit additional flexibility to change facilities, including changes to improve coverage, but also would assure that such changes

⁷⁴ "Streamlining of Mass Media Applications, Rules and Processes", *Report and Order* in MM Docket Nos. 98-43, 13 FCC Rcd 23056 (1998).

⁷⁵ 47 C.F.R. § 73.3572(a).

would not cause interference to existing service. As one way of striking a balance, we could routinely grant Class A facilities changes that meet the current LPTV definition, but permit other more expansive changes on a first-come first-served basis provided the proposed facilities would not conflict with previously authorized or proposed facilities. Under this approach, Class A stations could seek authorization for increased power, up to the limits of the service, outside of the window and auction procedures, provided their proposals met all interference protection requirements. This approach would be more consistent with the minor change provisions for full service radio and TV stations, and we propose it for Class A stations.⁷⁶

56. One important distinction between full power TV service and the proposed Class A service exists, however, which may warrant a somewhat different process for Class A modifications. TV minor change applications are not subject to a 30-day petition to deny period, but are subject to the filing of informal objections. However, unlike Class A stations, analog full-power analog TV interference is governed through channel allotments based on mileage separation requirements which serve to ensure facilities changes will not result in interference problems.⁷⁷ Because we do not propose specific separation requirements for Class A stations, we invite comment on whether we should subject the "more expansive" Class A minor change applications to a 30-day petition to deny period. The opportunity to file petitions to deny could serve to give some assurance that Class A facilities increases would not result in interference to existing service. This approach would essentially duplicate the process we now use in considering LPTV displacement applications.

57. We contemplate further requiring that the station be able to continue to serve at least part of the community identified on its authorization. (*See* Paragraph. 64, *infra.*) Any of the above provisions could also be used for digital Class A stations. Facilities changes for analog or digital Class A stations that would not meet the definition for minor changes would be subject to filing windows and the auction process. We invite comment on how we should define major and minor Class A TV facilities changes and on other ways to streamline the authorization of Class A TV service. If we were to adopt a more inclusive definition of minor facilities changes for Class A stations, should it also apply to television translator and non Class A LPTV stations? We would be inclined to do so because of the technical and application processing similarities between the LPTV and proposed Class A services.

58. *Class A Channel Displacement Relief.* Through additional protections for Class A stations, we hope to reduce their risk of channel displacement or termination. However, it could be necessary for a Class A station to seek operations on a different channel, as a way to avoid or eliminate interference conflicts. In that event, we propose that Class A stations be permitted

⁷⁶ We recently altered the definitions of "major" and "minor" facilities changes for the AM, Noncommercial FM and FM translator services so that fewer changes are regarded as major. *See Report and Order* in MM Docket 98-93, 64 FR 19498 (1999). Most facilities modifications in the FM and TV services are now considered minor.

⁷⁷ This approach is also applicable for DTV allotments not included in the initial allotment table (*See* 47 C.F.R. Section 73.623(d)).

to apply for new channels on a first-come, first-served basis, not subject to mutually exclusive applications. We believe there is a need for displacement relief procedures in a Class A service, and we propose to adopt procedures similar to those used in the LPTV service, which have worked well over the years.⁷⁸ Class A stations causing or receiving interference with NTSC TV, DTV or any other service or predicted to cause such interference would be entitled to apply for a channel change and/or other related facilities changes on a first-come first-served basis. Given the protected status of Class A stations and the significant facilities changes implicit in displacement applications, we propose that displacement applications filed by Class A licensees be treated as major changes, with the specific exception that such applications would be permitted to be filed at any time that displacement status could be demonstrated. Thus, like displacement applications by LPTV stations, Class A displacement applications would not have to be filed in a window. Applications of Class A stations would not be mutually exclusive unless filed on the same day. We tentatively conclude that mutually exclusive applications would be subject to the auction procedures pursuant to Section 309(j) of the Communications Act. We seek comment on these matters. Commenters may also address whether Class A applications could be excluded from the auction requirements consistent with legislative intent, and the basis on which we would resolve mutual exclusivity when it arises.

59. We note that in the LPTV service, displacement applications related to DTV conflicts or channel relocations from channels 60-69 are given priority over all other types of nondisplacement applications, regardless of when these were filed. We seek comment on whether we should adopt a similar policy for prioritizing Class A facilities modification applications, and whether some or all of the LPTV displacement relief provisions should apply to Class A television. Should there be any different or special provisions for Class A TV conflicts with DTV stations? Should there be a limitation on how far a station should be permitted to relocate its antenna site to avoid or eliminate an interference conflict or would some form of a minimum coverage requirement provide a natural limit on this distance?⁷⁹ Should we consider reasons for displacement other than electromagnetic interference, such as an unavoidable loss of antenna site? We ask whether Class A displacement applications should have priority over Part 74 LPTV or TV translator non-displacement applications filed earlier or on the same day? If a Class A station and a non-Class A LPTV station file mutually exclusive displacement applications, should we favor the Class A application? These are difficult questions; yet we believe there may be merit to awarding a priority to Class A stations in view of their Part 73 regulatory obligations. On the other hand, should LPTV or TV translator displacement applications have priority over Class A applications for facilities modifications not involving channel displacement? We invite comment on these issues.

⁷⁸ 47 C.F.R. §73.3572(a)(2).

⁷⁹ See Paragraph 64, *infra*. LPTV stations displaced by interference conflicts with analog TV service are permitted to relocate their sites within 16 kilometers; there is no relocation restriction to resolve DTV conflicts.

60. *Channels 60 - 69.* In the Balanced Budget Act of 1997 ("Budget Act"),⁸⁰ Congress required that the Commission "seek to assure" that a qualifying LPTV station authorized on a channel from channel 60 to channel 69 be assigned a channel below channel 60 to permit its continued operation.⁸¹ In the DTV proceeding, we amended our rules to permit all LPTV stations on channels 60 to 69 to file displacement relief applications requesting a channel below channel 60, even where there is no predicted or actual interference conflict.⁸² On June 1, 1998, we received 116 applications from LPTV stations and 187 applications from TV translator stations operating on these channels. We note that these applications have a higher priority than all other nondisplacement applications for LPTV and TV translators, regardless of when the applications were filed. Other LPTV and TV translator stations on channels 60 - 69 who have so far not elected to file displacement applications, may do so at any time provided they protect the proposed facilities of earlier-filed displacement applications. The Commission has not selected channels for qualifying LPTV stations; however, it has provided the opportunity for affected stations to seek channels below channel 60 on a priority basis. We invite comment on whether any and if so, what further actions should be taken to meet this Congressional mandate. Should we give special consideration to the processing of displacement applications from qualifying stations in the LPTV service seeking to vacate use of a channel above channel 59? Should these applications be given priority where they are mutually exclusive with other displacement applications that do not qualify under the terms of the Budget Act?

D. Other Technical Issues

61. *Television Channels for Class A Stations.* Although CBA proposed that Class A status be granted only to LPTV stations already authorized to operate on TV channels 2 - 59, we do not think this is appropriate. We propose not to authorize Class A service on channels 52 - 59. In the DTV proceeding, channels 2 - 51 were established as the permanent "core" spectrum, permitting the recovery of channels 52 - 59 at the end of the DTV transition period.⁸³ In the interest of providing long term stability for Class A stations, we believe it would be best not to authorize Class A status on these channels, only to subject stations to future displacement. Accordingly, we propose to grant Class A status only to qualifying stations already authorized to operate on channels 2 - 51.

⁸⁰ See Pub. L. No. 105-33, 111 Stat. 251, §3004 (1997), adding new §337(e) to the Communications Act.

⁸¹ Section 337(f)(2) of the Communications Act of 1934, as amended, establishes criteria for qualifying LPTV stations. The qualifications are: the station broadcast a minimum of 18 hours per day; the station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by the station; and, the station was in compliance with the requirements applicable to low-power television stations.

⁸² *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, supra*, at Paragraph 116.

⁸³ *Sixth Report and Order* in MM Docket No. 87-268, *supra*, at Paragraph 83.

62. We recognize that this spectrum limitation could adversely affect stations above channel 51. LPTV and TV translator operators on channels 60 - 69 have a presumption of displacement and may seek replacement channels at any time without further qualification. However, operators on channels 52 - 59 may seek displacement relief only where there is an actual or potential interference conflict, including a conflict with a DTV co-channel allotment. Nonetheless, these operators face displacement when channels 52 - 59 are reclaimed, and would be barred from becoming Class A stations if they could not secure a replacement channel below channel 52. Thus, we ask if the presumption of displacement should be extended to LPTV and TV translator stations authorized on these channels, giving these operators an immediate opportunity to seek replacement channels while such channels might still be available. We recognize this could lead to additional competition for replacement channels, channels which may be needed now by some LPTV and translator stations facing imminent displacement. We invite comment on spectrum issues for Class A stations and, in particular, on whether we should extend a presumption of channels displacement to LPTV and TV translator stations authorized for channels 52 - 59.

63. *Power Levels.* We believe the current power levels are sufficient to preserve existing service, and we believe that further increases could hinder the implementation of digital television and could limit the number of Class A stations that could be authorized. CBA has proposed maximum levels of effective radiated power (ERP) for Class A stations that exceed the ERP limits in the LPTV service rules.⁸⁴ For example, CBA proposes that analog Class A stations operating on channels 14 and above be authorized at ERP levels up to 500 kW ERP, a power level above that being used by many full service UHF television stations. CBA proposes that digital Class A ERP be the same as the provisions in the Commission's Rules for digital television stations operating on allotments created after the initial DTV Table.⁸⁵ We understand CBA's desire to enhance the signal coverage of Class A stations. However, we note that our primary purpose in this proceeding is to provide additional stability for qualifying LPTV stations, and this by itself is a formidable undertaking. Our current belief is that any further power increases for Class A stations should await a fuller understanding of the coverage and interference potential of full service digital television stations. We invite comment on this aspect of the proposed Class A service.

64. *Coverage Requirements.* Another issue to be resolved is whether to require Class A stations to provide some requisite level of coverage over their community. CBA originally

⁸⁴ In the DTV proceeding, section 74.735 of the LPTV rules was amended to replace transmitter power output limits with limits for effective radiated power. The limits for analog LPTV and TV translator stations are 3 kW and 150 kW for VHF and UHF channels, respectively. For digital operations, the limits are 300 watts for VHF and 15 kW for UHF stations.

⁸⁵ CBA points to the "[l]imits in sections 73.622(e)(4), (5), and (6)." We believe that the reference is intended to be to section 73.622(f)(6), (7), and (8). For example, a DTV station allotted a UHF channel subsequent to the initial Table is permitted a maximum ERP of 1000 kW if the station's antenna height above average terrain does not exceed 365 meters.

proposed that Class A stations should be required to provide certain signal strength levels over the entire "principal community to be served." In its amended petition it revised its proposal to specify that a certain minimum field strength be placed over at least 75% of the community of license. Several commenters opposed this proposal, believing that coverage of population was more important than geographic area or that a certain percentage (75%) of a station's minimum field strength contour must be over the station's community of license. We question whether a minimum coverage requirement such as that proposed by petitioner should be imposed on Class A stations. Such stations may not operate with sufficient power to serve large communities, and we have expressed reservations about increasing power limits for Class A stations beyond the current limits in the LPTV service. Those Class A stations that are intended to serve an entire community that is otherwise unserved or underserved would appear to have ample incentive to provide a requisite level of service to the residents of the whole of that community without a Commission requirement to do so. Other stations, by their very nature, might intend to serve only a narrow segment of their community.

65. We seek comment on whether to require any certain signal level or other measure of Class A reception quality to any particular geographical area or population. Alternatively, if we do adopt a coverage requirement, should it be couched in terms of a certain proportion of the Class A station's signal contour having to be placed over at least some part of its community of license?⁸⁶ This type of requirement would serve to maintain a connection between the Class A station and its community of license without requiring it to serve any requisite portion of that community. This would be particularly beneficial where the community of license is large and the Class A station is intended to serve only a part of it. We seek comment on this issue and on what portion of a Class A station's signal contour, if any, should have to be placed over some part of its community of license.

E. Ownership Restrictions

66. A principal objective of any proposal to elevate certain LPTV stations to Class A status is to recognize their contribution to local diversity. Accordingly, our preliminary view is that, if we create a Class A service, these rules should apply to Class A licensees to the same extent they apply to full service licensees, at least with regard to local ownership limits. At the present time, we do not believe it appropriate to apply the national audience reach cap to Class A stations. That reach cap is premised on the ability of a full service station to reach the entire market (or, in the case of UHF stations, to actually reach half of the entire market). As noted above, we do not anticipate that Class A stations would be required to reach or, in many instances, would be able to reach an appreciable portion of the markets in which they are located. Thus, it would be inequitable to charge a Class A station with reaching its entire market, and to cap Class A stations under common ownership to reaching a theoretical 35% of the national TV

⁸⁶ We recognize that, in effect, LPTV stations are licensed to serve particular areas rather than particular communities. This type of requirement would require that Class A stations be licensed to a particular community even though they would not have to serve a requisite percentage of the entire community or its population.

audience, when, in actuality, such a group of stations might reach only a small proportion of that figure. We seek comment on these issues. In this regard, there are several questions we would like addressed by commenters. First, to what degree would application of Part 73 multiple and cross-ownership limitations limit the ability of LPTV stations to upgrade to Class A? Second, if we do decide to impose these ownership limitations, should we grandfather existing combinations that would be prohibited by the rule and, if so, should grandfathered status terminate at some point? Third, on the local level, what should be the triggering threshold for any applicable ownership restraints? For example, should the duopoly rule for Class A stations prohibit common ownership of stations whose protected service contours overlap?

F. Digital Class A Stations

67. We propose to allow Class A stations at any time to request authority to convert from analog to digital operation on their existing channels, provided interference protection standards are met. However, we will not, as CBA proposed, permit Class A stations to apply for a second channel for digital operations. We believe this could be detrimental to the smooth implementation of DTV, including the possible spectrum needs of DTV stations having unforeseen problems with their initial allotments. In some parts of the country, available spectrum is scarce, and it may be difficult, if not impossible, to accommodate all LPTV stations qualified for Class A with a single channel. Also, we are concerned about the impact on the LPTV stations and TV translators that would not be part of the Class A service, as evidenced by the nearly 1,600 LPTV and TV translator displacement relief applications we have received since June 1, 1998; nearly 300 of these application proposals were mutually exclusive when filed with one or more applications competing for replacement channels. These may involve stations that could meet CBA's proposed Class A qualifications. In the DTV proceeding, we denied a request to award second channels to applicants for new TV stations, whose applications were pending on the day on which DTV channel allotments and initial "modification licenses" were awarded eligible broadcasters; *i.e.*, those holding full service TV licenses or construction permits.⁸⁷ CBA's third proposal would allow Class A stations to apply for digital channels in the Table if the full service licensee or permittee failed to file a DTV construction permit application within its prescribed deadline. It may be possible for a Class A station to seek operations on a channel which would become available; however, for the reasons given above, we do not propose awarding a second channel to Class A stations. We invite comments on these issues.

68. Digital operation by Class A stations presents the issue of compliance with the

⁸⁷ *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 6860, 6865 (1998). *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in MM Docket No. 87-268, 64 FR 4322 (1998).

technical and service rules applicable to full service DTV stations.⁸⁸ We invite comment on rules that should or should not apply to digital Class A stations. We currently believe that, at a minimum, these stations should have some broadcast requirement, and we seek comment on this view. What supplementary and ancillary fees regulatory approach should apply to Class A broadcasters providing feeable services? Should it be the same as we apply to full service DTV stations? We also believe primary stations should be required to use the transmission standard adopted for DTV stations and seek comment on this issue. Within what period of time after receiving digital authority, such as CBA's proposal of 18 months, should we require stations to commence digital operation?

G. Remaining Issues

69. Three remaining issues should also be addressed. One issue concerns the format of call signs to be issued to Class A stations? LPTV stations may request use of four-letter call signs, which must be appended by the suffix "-LP". In its petition, the CBA proposes only that Class A call signs be assigned pursuant to section 73.3550 of the Commission's Rules, which includes the current LPTV call sign provisions. Should Class A stations be assigned four-letter call signs without a designating suffix other than "-TV," for example, in the manner of Class A FM radio stations? If not, what is an appropriate suffix? Another issue, which is not mentioned in the CBA petition, is the issue of whether Class A transmitters should be certified (similar to the previous "type acceptance" requirement) or should the less stringent Part 73 "verification" requirement or some other criteria apply? Finally, what class of fees should apply to Class A applicants? We believe it appropriate to classify Class A applications as minor modifications for fee purposes. How should Class A stations be considered for the purposes of regulatory fees assessed pursuant to Section 9 of the Communications Act of 1934, as amended?⁸⁹ We seek comment and these and other issues.

IV. CONCLUSION

70. In this *Notice*, we seek comment on the creation of a Class A low power television service, which would afford stability to LPTV stations providing local service, while also considering the needs of other services, foremost among these the transition to digital television service. Creation of such a service will require the balancing of a number of factors, which will not be easy to strike. Accordingly, we seek comment on all of the issues raised herein to assist us in achieving that balance.

⁸⁸ See *Fourth Report and Order* in MM Docket 87-268, 11 FCC Rcd 17771 (1996); *Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd. 12809 (1997), *recon. granted in part and denied in remainder* *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* in MM Docket No. 87-268, *supra*; *Sixth Report and Order* in MM Docket 87-658, *supra*, *recon. granted in part and denied in remainder* 13 FCC Rcd 7418 (1998).

⁸⁹ 47 USC §159.

V. ADMINISTRATIVE MATTERS

71. *Comments and Reply Comments.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on before [60 days after publication in the Federal Register] and reply comments on or before [90 days after publication in the Federal Register]. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

72. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

73. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554.

74. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, S.W.; 3-C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 99-292), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W.; CY-B402, Washington, D.C. 20554.

75. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R.

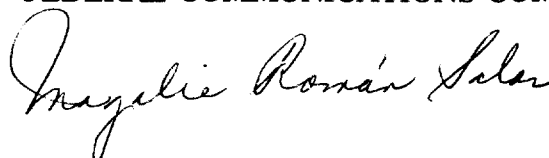
Sections 1.1202, 1.1203, and 1.1206(a).

76. *Initial Regulatory Flexibility Analysis.* With respect to this *Notice*, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix A. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this *Notice*. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Notice*, but they must be filed in accordance with the same filing deadlines as comments on the *Notice*, but they must have a distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

77. *Authority.* This *Notice* is issued pursuant to authority contained in Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, and 307.

78. *Additional Information.* For additional information on this proceeding, please contact Keith Larson, Office of the Bureau Chief, Mass Media Bureau, (202) 418-2600 or Roger Holberg, Policy and Rules Division, Mass Media Bureau, (202) 418-2134.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX A

Initial Regulatory Flexibility Act Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 ("RFA"), the Commission is incorporating an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the policies and proposals as an Appendix to this *Notice of Proposed Rule Making (Notice)*. Written public comments concerning the effect of the proposals in this *Notice*, including the IRFA, on small businesses are required. Comments must be filed in accordance with the same filing deadlines as comments on the *Notice*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.⁹⁰

Reason Why Agency Action is Being Considered: The Community Broadcasters Association filed a Petition for Rule Making asking that the Commission create a "Class A" broadcast service consisting of low-power television stations that had provided at least three hours per week of locally produced programming during the three months immediately preceding the filing of their application for Class A status and met other eligibility criteria. *Public Notice* of that Petition was given on April 21, 1998. Comments and reply comments were filed. On the basis of those comments, the Commission believes that a *Notice of Proposed Rule Making*, considering creation of such a class of television broadcast stations is appropriate. Creation of such a class of television stations would provide qualifying low power television stations primary status that should help them survive the transition to digital television, which will require, during the transition, a doubling of the number of authorized primary full service stations that will otherwise displace numerous low power stations and eliminate a number of these stations. The *Notice* considers creation of the Class A service and asks specific questions on issues on which a further record is necessary and appropriate.

Need For and Objectives of the Proposed Rule Changes: The *Notice* in this proceeding is seeking comment on whether and how the Commission should create a Class A service that will give qualifying low power television broadcast stations primary status. This will allow the continued development of locally produced programming aired on these stations to the benefit of the informational and entertainment needs of the audiences they serve notwithstanding the transition to digital broadcast television service.

Legal Basis: Authority for the actions proposed in this *Notice* may be found in Sections 4(i), 303 and 307 of the Commissions Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 307 and 307.

⁹⁰ Pub. L. No. 96-354, 94 Stat. 1164. 5 U.S.C. § 601 et seq. (1981), as amended.

Reporting, Recordkeeping, and Other Compliance Requirements: The Commission is not proposing any new or modified reporting, recordkeeping, information collection, or compliance requirements in this proceeding.

Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules: The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

Description and Estimate of the Number of Small Entities to Which the Rules Would Apply: Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register. There are approximately 2,200 LPTV stations that potentially could be affected by decisions reached in this proceeding. The impact of actions taken in this proceeding on small entities would ultimately depend on the final decisions taken by the Commission and the number of LPTV stations that would qualify and apply for Class A status. However, the impact of the decisions taken in this proceeding on LPTV stations should be a positive one, enabling those qualifying for Class A status to gain a greater degree of security in the continuation of their existence without the potential for continuing displacement during the transition to digital television.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: This *Notice* solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. This proposal will ultimately provide benefits all qualifying low power television stations by facilitating means for them to survive the transition to digital television. We seek comment on the alternatives proposed in this *Notice*, on any other alternatives that commenters feel would provide benefits to such stations as they go through the period of transition to digital television, and on whether there is a significant economic impact on any class of small licensees or permittees as a result of any of our proposed approaches.

APPENDIX B

Initial Paperwork Reduction Act Analysis

This *Notice* explores the potential creation of a Class A service of television broadcasters. In this *Notice of Proposed Rule Making*, we solicit comment on the possibility of creating a new application form for LPTV licensees applying for Class A status. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collection contained in the *Notice of Proposed Rule Making*. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from the date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W.; 1-C8004., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

APPENDIX C

Summary of Additional Comments to the Petition of the Community Broadcasters Association (CBA) for Establishment of a Class A Low Power Television Service

1. The *Notice*, at paragraphs 19 - 21, summarizes statements of support and opposition as to whether a low power Class A television service should be established. The views of commenters on specific issues raised in the CBA petition are summarized below.

A. Comments favoring a Class A television service

Qualifications for Class A Status

2. An area receiving substantial comment from commenters favorable to a Class A service was the requirement that, in order to qualify, an LPTV licensee would have to demonstrate in its application that it had, during the three months prior to filing, broadcast not less than three hours in each calendar week programming produced within the principal city contour of the station, or produced within the principal city contour of any of a group of commonly controlled stations that carry common local or specialized programming not otherwise available to their communities. Some differ with CBA on where qualifying programming should have to be produced. Some argue that, to qualify, it should have to be produced within the Designated Market Area in which the station's community of license is located⁹¹ or within a certain stated distance of the transmitter site.⁹² Others differ with CBA on when the local programming requirement should take effect. Polar Broadcasting, Inc. would allow a station to apply for Class A status 30 days after certifying that it is in compliance with the local program origination requirement.⁹³ Debra Goodworth believes that the requirement for three hours per week of local programming should take effect two years after a station converts to Class A status, at least in the case of Class A stations owned by women, minorities and small businesses, not

⁹¹ Comments of International Broadcasting Network at 2; *see also* comments of John Kompas and Jackie Biel d/b/a KB Ltd. at 6-7 ("market area").

⁹² Comments of International Broadcasting Network at 2 (35 miles); *see also* comments of Island Broadcasting at 4 (50 miles); comments of Robert R. Rule d/b/a Rule Communications at 2 (75 miles); comments of TTI, Inc. at 4 (35 miles); comment of Larry L. Schrecongost at 5 (50 miles); comment of Telemundo Group, Inc. at 4 (within 15 miles of the principal community of license or within the contour defined in Sections 73.625(a)(i) and 73.683(a), whichever is greater.); comments of National Translator Association at 1 (within the Grade A signal contour).

⁹³ Comments of Polar Broadcasting, Inc. at 2.

before primary status is applied for as is proposed by CBA.⁹⁴ National Minority T.V., Inc. would phase in a local programming requirement. Under its proposal, to qualify, a station would have to provide one hour of local programming each week within one year of the effective date of the Class A rules, two hours per week within two years of that date and three hours of local programming per week by the third anniversary of the effective date.⁹⁵ They would phase in the requirement in this manner because of the financial burden of a local program production requirement. "By allowing a gradual increase of the number of local programming hours that must be aired per week, LPTV/TV translator stations will be able to make the transition to digital operation with minimal disruption, allowing it to focus on building contacts within the community and continuing to create programming that best serves the needs of its audience."⁹⁶

3. Another commenter, Larry L. Schrecongost, believes that, rather than having to provide three hours of local programming in each week for 90 days prior to filing, the prospective Class A licensee should be allowed to average qualifying programming over the period in order to take into account the operational problems, staffing limitations, etc., common to LPTV stations.⁹⁷ Additionally, he advocates a "special computational programming incentive credit" for licensees who would work with bona fide educational institutions in their areas to produce certain locally produced programming. Under this plan, if a licensee airs, or helps develop local programming that both matches any curriculum or school program offered in that local educational institution and includes the participation of that institution's students, then a special "double computational credit" should be given that licensee so that, for example, a thirty-minute program qualifying for the double credit would count as a one hour program for purposes of meeting any qualification requirement.⁹⁸ KM Broadcasting, Inc. asks that "locally-produced" be clearly defined and asks the Commission to clarify whether locally produced commercials, public service announcements and repeated programming may be counted.⁹⁹ Univision Communications Inc. questions what the "specialized programming not otherwise available to their communities" aspect of the local programming requirement means. It asks under what circumstances foreign language programming will be considered "not otherwise available." Univision questions whether any LPTV stations in a given community will be able to convert to

⁹⁴ Debra Goodworth d/b/a Turnpike Television at 2, fn. 1, and 5-6. She also advocates that programming requirements placed on Class A stations be no greater than those currently in effect in Part 73 for full service stations. *Id.* at 5-6.

⁹⁵ Comments of National Minority T.V., Inc., at 2; reply comments of National Minority T.V., Inc., at 3.

⁹⁶ Comments of National Minority T.V., Inc. at 3.

⁹⁷ Comments of Larry L. Schrecongost at 3-4.

⁹⁸ *Id.* at 4.

⁹⁹ Comment of KM Broadcasting, Inc. at 3.

Class A status if foreign language programming is already being carried in the community.¹⁰⁰ Accordingly, it recommends dropping the "otherwise unavailable" aspect from the definition. Also, it fears that the 3 hour criterion "might reward a licensee who constantly airs a tape of his or her daughter's dance recital, but fails to acknowledge that certain LPTV licensees produce special programming for the audience, but do not do so within the principal community contour of commonly-controlled stations."¹⁰¹ Accordingly, it advocates limiting Class A status to LPTV stations that have broadcast programming other than test-patterns 24 hours per day for the year prior to adoption of the order creating Class A service.¹⁰² Other commenters believe that Class A status should not be limited to LPTV stations alone but should be given to translators as well with the three hour local programming requirement being met by the carriage of local programming of the primary station within that station's Grade B contour.¹⁰³

4. CBA petition supporter Trinity Broadcasting Network disagrees with the programming proposal in its entirety. It believes that retroactive application of a 90-day local programming rule would "trench upon" the prohibition against the Commission making content-based analysis in programming and such a rule would treat similarly situated LPTV broadcasters in a disparate manner based on an invalid content-based criterion.¹⁰⁴ Also, Trinity believes that there is no articulated reason for differential treatment of similarly situated LPTV broadcasters (those with and those without local programming) based upon a rational factual basis and, accordingly any such requirement would be struck down as arbitrary and capricious.¹⁰⁵ Finally, Trinity believes that the "90 days prior" proposal runs afoul of the Administrative Procedures Act because it fails to give all affected parties an opportunity to have input into the process.¹⁰⁶

5. Some commenters believes that LPTV stations ought to be able to qualify for Class A status at any time they meet the qualifications and not simply for a limited window of opportunity,¹⁰⁷ while others oppose the proposed filing fee.¹⁰⁸

¹⁰⁰ Comments of Univision Communications Inc. at 5.

¹⁰¹ *Id.* at 6.

¹⁰² *Id.*

¹⁰³ Comments of National Translator Association at 1. NTA also contends that, under the CBA proposal, Class A stations would be able to apply for an additional channel for digital operation without protecting other LPTV and translator stations, thereby subjecting them to a possible further round of displacements. *Id.* at 3. Arnold Cruze d/b/a Cruze Electronics believes that we should not allow Class A stations to displace existing or future translator or LPTV stations.

¹⁰⁴ Comments of Trinity Broadcasting Network at 2-4.

¹⁰⁵ *Id.* at 4.

¹⁰⁶ *Id.*

¹⁰⁷ Comments of Commercial Broadcasting Group at 2. Comments of National Translator Association at 1.

Community Coverage Requirements

6. Island Broadcasting Company would amend the coverage requirement proposed by CBA to require 75% coverage of either population or geographic area of the proposed Class A station's community of license since, in some cases, geographic area alone is an unfair measure of a station's coverage.¹⁰⁹ Similarly, KM Communications Inc. would require that the minimum field strength be provided over at least 75% of the Class A station's community of license or 75% of the Class A station's minimum field strength contour must be over the station's community of license.¹¹⁰ Polar Broadcasting, Inc., contends that the dBu coverage requirement as proposed by CBA (in proposed Section 73.683(a)) is restrictive and that many LPTV stations converting to Class A status may not be able to increase power sufficiently to meet the requirement. It recommends that the dBu requirement be dropped and that stations only be required "to substantiate reasonable coverage and/or viewability."¹¹¹ Third Coast Broadcasting, Inc., also objects to the coverage requirement. It states that this has not previously been required and, in order to fairly implement this requirement, the Commission should have "frequent, regular, and predictable major modification filing windows" so that LPTV stations can change their facilities to meet this requirement.¹¹²

Station Effective Radiated Power

7. Other commenters supporting the petition oppose CBA's proposal to allow increased power by LPTV stations qualifying for Class A status. The National Translator Association opposes the proposed increase in maximum ERP for Class A stations. It states that, in effect, an increase in LPTV power limits was granted last year in the DTV proceeding and the Commission should see how those limits work in practice before increasing them further.¹¹³ Arthur D. Stamler argues that the proposed power increase is overly ambitious and believes a limitation of 10 kW for VHF and 150 kW for UHF stations is appropriate.¹¹⁴ Telemundo would limit power levels for Class A DTV stations to one-tenth of those of full power DTV stations.¹¹⁵

¹⁰⁸ Comments of KM Broadcasting, Inc., at 3; comments of Larry L. Schrecongost at 3.

¹⁰⁹ Comments of Island Broadcasting Company at 3; *see also* comments of Telemundo at 4.

¹¹⁰ Comments of KM Communications, Inc. at 4.

¹¹¹ Comments of Polar Broadcasting, Inc., at 3.

¹¹² Comments of Third Coast Broadcasting, Inc., at 4-5. Third Coast also believes that the Commission should be flexible in considering "communities of license" to allow stations that cover ethnic communities within urban markets to serve their community or suburb without having to serve the whole market. *Id.* at 5.

¹¹³ Comments of National Translator Association at 3.

¹¹⁴ Comments of Arthur D. Stamler/Ruarch Associates LLC at 6.

¹¹⁵ Comments of Telemundo Group, Inc. at 3.

Interference Protection

8. Questions concerning interference were also raised by commenters otherwise supporting the CBA petition. D Lindsey Communications made several recommendations for changes including that the Class A applicant should only have to file a statement that it is operating in accordance with its construction permit or license and would not cause any additional interference to any existing full service station's Grade B contour or LPTV protected contour.¹¹⁶

It would allow Class A stations to show the absence of interference due to terrain shielding, directional receiving antenna factors, lack of population served and interference already existing from other sources, and it would allow LPTV stations to upgrade to Class A status and continue to operate "until actual interference occurs and the interference cannot be eliminated by remedial measures."¹¹⁷ KM Broadcasting, Inc. would like the Class A rules to incorporate all current Commission standards and methodologies for determining interference between two TV stations rather than adopt CBA's proposal which it believes could restrict a Class A licensee's ability to meet Commission interference standards.¹¹⁸ Both TTI, Inc. and Third Coast Broadcasting, Inc., believe that the CBA proposal would prohibit an upgrading LPTV station to cause interference with a new LPTV station which, under existing Commission rules in Part 74, is permitted to accept interference from existing LPTV stations.¹¹⁹

B. Comments of parties opposing a Class A television service

9. The Association of America's Public Television Stations (APTS) is concerned that the CBA proposals in the CBA petition could hamper the ability of current public television stations that operate with limited facilities, due to limited financial resources, from being able to make public television service more widely available by increasing their power or antenna height when finances permit.¹²⁰ Also, the petition is said to be silent as to whether full service stations assigned DTV channels outside the core frequencies will be required to protect Class A stations when they shift to an in-core digital assignment. If there is such a protection requirement, it would restrict public television stations' choices of permanent digital channels and could force them to accept less desirable channels, with smaller coverage areas, lower power and poorer

¹¹⁶ Comments of D Lindsey Communications at 2.

¹¹⁷ *Id.*

¹¹⁸ Comments of KM Broadcasting, Inc., at 3. Third Coast Broadcasting, Inc. also believes that, to qualify for Class A status, an LPTV station would simply have to show that it meets all FCC technical standards for its license. Third Coast Broadcasting, Inc. at 4.

¹¹⁹ Comments of TTI, Inc. at 3; comments of Third Coast Broadcasting, Inc., at 3. Third Coast also believes that interference should be calculated on the basis of propagation curves, distance to certain contours, or population and coverage analysis as described in OET 69. *Id.* at 4.

¹²⁰ Comments of Association of America's Public Television Stations at 4.

quality service.¹²¹ The need to protect Class A stations would also make it more difficult, if not impossible in some areas, for the Commission to replace the reserved non-commercial channels that were deleted from the NTSC Allotment Table in order to accommodate digital assignments during the transition.¹²² APTS is also concerned that giving Class A stations priority over public television translators would jeopardize the ability of many of these translators to continue operating during and after the transition to digital.¹²³

10. The CBA proposal is also criticized for creating a priority for Class A stations as of the date they apply as against full service stations that are subsequently "authorized." First, the Association of Maximum Television comments that the word "authorized" is not defined in the CBA proposal.¹²⁴ Second, it and other commenters assert, this will limit the ability of full power DTV stations to adjust antenna height and power after LPTV stations have applied for Class A licenses and could permit Class A licensees to obtain DTV licenses and supplant or cause interference to full power DTV stations "authorized" after the Class A licensee applies for its DTV channel.¹²⁵ This would undermine the Commission's goals of accommodating all NTSC licensees and of replicating wide-area NTSC coverage in the digital arena.¹²⁶ Moreover, it would fail to address the underlying and fundamental balance of interests previously determined by the Commission - a preference for stations that reach a broad audience.¹²⁷ Cox Broadcasting comments that LPTV's secondary status was based on sound technical considerations and that CBA has not provided evidence that low power stations either air more local programming or are

¹²¹ *Id.* at 5-6.

¹²² *Id.*

¹²³ *Id.* at 7. In some areas, such as in some western states where one translator delivers a signal feed to another, the loss of a single translator could have "daisy chain" effects depriving that community and the other communities served by the translator network of public television programs. *Id.* at 8. Thus, the proposal is said to undermine the 36-year Federal policy of ensuring universal access to public television as set forth in the Educational Television Facilities Act of 1962 and the Public Broadcasting Act of 1967. *Id.* at 9.

¹²⁴ Comments of Association for Maximum Service Television, Inc., at 4.

¹²⁵ *Id.* at 5-6; see also comments of Cox Broadcasting, Inc. at 2. Cox argues that viewers, who have a legitimate expectation of service from local full service stations may suffer when full service stations' modifications are blocked by protected Class A stations. This risk of "modification paralysis," it continues may discourage long-term financial backing in an industry that requires an extensive supply of capital to upgrade facilities to provide DTV service.

¹²⁶ Comments of Association of Maximum Service Television at 6-7. At the least, Association of Maximum Service Television argues, this will create a race to get DTV facilities authorized in order to avoid risking losing priority to Class A stations, depriving full power DTV stations of the flexibility provided to them by the DTV Table; e.g., in a rush to get their stations authorized, broadcasters may forego opportunities to negotiate with other full power DTV broadcasters allotment swaps or use of a shared tower. *Id.* at 8

¹²⁷ Comments of Cox Broadcasting, Inc., at 3.

more sensitive to a communities programming needs than full power stations.¹²⁸

C. Comments of nonbroadcast parties neither supporting or opposing a Class A service

11. The Association of Public-Safety Communications Officials - International, Inc. (APCO), objects to CBA's proposal to the extent it would grant LPTV stations primary status over new public safety operations in the 764-776/794-806 MHz band (i.e., LPTV operations on Channels 63, 64, 68 and 69, as well as adjacent channel operations on channels 62, 65, and 67).¹²⁹ APCO argues that this band has been reallocated per congressional mandate for public safety services. This reallocation was based on the needs of police, fire, emergency medical services and other agencies for approximately 24 MHz of new spectrum to support their critical communications operations. Without it, APCO asserts, public safety agencies will not be able to adequately discharge their obligations.¹³⁰ However, APCO acknowledges the serious concerns of LPTV operators concerning the impact of the DTV transition on their operations and notes that LPTV stations need not cease operation unless and until those operations pose a potential for interference to actual public safety systems.¹³¹

12. Motorola, while taking no general position on the CBA petition, believes that any new broadcast service should not impose a negative impact on primary land mobile operations. The Commission has already considered the impact of the reallocation of channels 60-69 on LPTV service and concluded that interference protection for LPTV and TV translators was incompatible with the reallocation and would preclude access to the spectrum throughout much of the nation.¹³² While believing that it would inappropriate for the Commission to take steps to increase the number of protected incumbents at this time, Motorola argues that, if the Commission goes forward with Class A television service, it should restrict it to channels below UHF-TV channel 60 and should protect land mobile services between 470-512 MHz (UHF-TV channels 14-20) in 11 major markets by establishing interference standards, as the Commission's rules now prescribe for secondary services, including LPTV.¹³³ If the Commission pursues the

¹²⁸ *Id.* at 5. Cox argues that to grant the CBA petition would be to elevate programming above technical considerations, ignoring long-standing Commission precedent that hold that non-technical factors, such as programming, can never be the basis for waiving the Commission's technical rules. *Id.*

¹²⁹ Comments of APCO at 2.

¹³⁰ *Id.* at 2-3.

¹³¹ *Id.* at 3.

¹³² Comments of Motorola at 2.

¹³³ *Id.* at 2. Motorola states that the CBA proposal does not contemplate application of these standards to Class A service. These comments were filed prior to CBA's August 27, 1998, filing which provided that Class A operations would be limited to channels 2-59.

CBA proposal for channels below UHF-TV channel 60, Motorola concludes, it must protect land mobile stations to levels consistent with the existing provisions of Section 74.709 or the original mileage separations adopted in Docket 18261, whichever offers greater protection.¹³⁴

¹³⁴ *Id.*

**Joint Statement of Chairman William E. Kennard
and Commissioner Gloria Tristani**

Re. In the Matter of Establishment of a Class A Television Service (MM Docket No. 99-292).

We wholeheartedly support commencement by the Commission of a rule making proceeding looking toward the creation of a Class A license for qualifying stations in the low power television service (LPTV). Many LPTV stations offer their communities significant services, often functioning as the only local television station. LPTV stations commonly serve as exclusive outlets for foreign language and special programming for unserved and underserved audiences. Moreover, many LPTV stations are owned by small businesses, minorities and women and thus enhance the diversity of ownership in the broadcast industry. Nonetheless, because LPTV stations are secondary, they continue to be displaced and dislocated as new primary users and changes to existing primary users' facilities are authorized. Class A status represents a means of ameliorating these problems and preserving the valued services many LPTV stations provide. We therefore support the issuance of this *Notice of Proposed Rule Making* to consider Class A status for certain LPTV stations.

We strongly disagree, however, with the tenor of the *Notice* that we issue today. It essentially avoids proposing any specific protections for a Class A service, asking instead "whether and how" a Class A service should be crafted. We would have preferred affirmative proposals for a Class A service and a measure of primary status that would afford those stations carefully defined protections from further displacement, consistent with our ongoing implementation of digital television service. For example, we believe that the Commission should have proposed to provide prospective Class A stations priority against new digital television applications that are filed after Class A status is awarded and that do not involve a "paired" digital channel.

We recognize that we are at the notice stage of this proceeding and that any proposals we make or conclusions we reach here are necessarily tentative; they should, and will, be tested by public comment and further analysis. But, this does not mean that we must equivocate to the point of utter agnosticism. This is, after all, a notice of *proposed* rule making. Nevertheless, our action today is a welcomed step toward resolving the longstanding uncertainty and insecurity that LPTV stations have faced. We invite all parties to participate fully and to provide as much detail and specificity in their comments as possible.